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VERA WILLNER,  
Plaintiff,  
v.  
MANPOWER INC.,  
Defendant.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. [11-cv-02846-JST](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART MANPOWER'S  
MOTION FOR JUDGMENT ON THE  
PLEADINGS OR SUMMARY  
JUDGMENT; GRANTING MOTION  
FOR LEAVE TO AMEND THE  
COMPLAINT; GRANTING  
WILLNER'S MOTION FOR SUMMARY  
JUDGMENT**

Re: ECF No. 76, 95, 100, 101, 106

Three motions are pending in this putative class action for violations of California labor laws. First, Defendant Manpower moves for judgment on the pleadings or for summary judgment with respect to four of the five claims that Plaintiff Willner has asserted in the operative complaint. Second, Willner moves for leave to file a fifth amended complaint. Third, Willner moves for summary judgment on her claim for PAGA penalties in connection with Manpower's purported violations of California Labor Code section 226. Each of these motions is opposed. For the reasons set forth below, Manpower's motion for judgment on the pleadings or summary judgment is GRANTED IN PART and DENIED IN PART, and both of Willner's motions are GRANTED.

**I. BACKGROUND**

**A. The Parties and Claims**

Plaintiff Vera Willner is an hourly employee of Manpower, which operates a "temporary employment agency." Fifth Am. Compl. ("FAC") ¶ 2.<sup>1</sup> She received her wages from Manpower

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<sup>1</sup> As will be discussed in section II of this order, the Court will grant Willner's motion to amend the complaint. Accordingly, the operative complaint is Willner's proposed Fifth Amended

1 by U.S. mail and was paid on a weekly basis when work was assigned to her. Id.

2 Willner brings this putative class action against Manpower “for California Labor Code  
3 violations stemming from [Manpower’s] failure to furnish accurate wage statements and failure to  
4 timely pay all wages to employees who received their wages by U.S. mail.” Id. ¶ 1.

5 Willner asserts the following five claims in the operative complaint: (1) violations of  
6 California Labor Code section 201.3(b)(1) for failure to pay timely weekly wages; (2) violations  
7 of California Labor Code section 226 for failure to furnish accurate wage statements; (3)  
8 violations of California’s Unfair Competition Law (“UCL”) for failure to provide accurate wage  
9 statements and to pay timely wages; (4) penalties under the Private Attorney General Act  
10 (“PAGA”) for failure to provide accurate wage statements and to pay timely wages; and (5)  
11 violations of California Labor Code sections 201 and 203 for failure to pay timely wages due at  
12 separation.

13 Willner seeks to represent two classes of temporary employees. First, in connection with  
14 her claims under section 201.3(b)(1), the UCL (to the extent that the claim is premised on  
15 violations of section 201.3(b)(1)), and PAGA (to the extent that the claim is premised on  
16 violations of section 201.3(b)(1)), she seeks to represent:

17 All persons who were or are employed by Manpower Inc. in  
18 California as temporary employees at any time from four years  
19 before the filing of the Complaint up to the present who received  
20 their wages by U.S. mail, except individuals who were or are at the  
same time jointly employed by a franchisee of Manpower,  
including, but not limited to, franchisee CLMP LTD., dba  
Manpower of Temecula.

21 FAC ¶¶ 5, 14.

22 Second, in connection with her claims under section 226, the UCL (to the extent that the  
23 claim is premised on violations of section 226), and PAGA (to the extent that the claim is  
24 premised on violations of section 226), she seeks to represent:

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26 //

28 Complaint.

All persons who were or are employed by Manpower Inc. in California as temporary employees at any time from one year before the filing of the Complaint up to the present who received their wage statements from Manpower Inc. by US. mail or by electronic transmission, except individuals who were or are at the same time jointly employed by a franchise of Manpower, including, but not limited to franchise CLMP LTD., dba Manpower of Temecula.

FAC ¶¶ 5, 14.

#### B. Jurisdiction

The Court has jurisdiction over this action under 28 U.S.C. § 1332(d).

### II. MOTION FOR LEAVE TO AMEND THE COMPLAINT

#### A. Legal Standard

Federal Rule of Civil Procedure 15(a) permits a party to amend a pleading once “as a matter of course” within 21 days of serving it or within 21 days after a response to it has been filed. Fed. R. Civ. P. 15(a)(1). Otherwise, “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). A district court “should freely give leave” to amend a pleading “when justice so requires.” *Id.* “Four factors are commonly used to determine the propriety of a motion for leave to amend. These are: bad faith, undue delay, prejudice to the opposing party, and futility of amendment.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citation omitted). “Not all of the factors merit equal weight . . . it is the consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). “The party opposing amendment bears the burden of showing prejudice.” *DCD Programs*, 833 F.2d at 187. Generally, a court must make the determination of whether to grant leave “with all inferences in favor of granting the motion.” *Griggs v. Pace Am. Grp., Inc.*, 170 F.3d 877, 880 (9th Cir. 1999).

#### B. Analysis

After the Court took under submission Manpower’s motion for judgment on the pleadings or summary judgment, Willner filed a motion for leave to file a fifth amended complaint to expand her class allegations with respect to Manpower’s purported violations of section 226 to cover all

1 temporary employees in California regardless of how they received their wage statements. ECF  
2 No. 100 at 1. Previously, this putative class claim had been limited to temporary employees who  
3 had received their wage statements via mail. See Fourth Am. Compl. ¶ 14, ECF No. 80. Willner  
4 argues that the proposed amendment will not affect the determination of the pending motion for  
5 judgment on the pleadings or summary judgment because it “does not add (or take away) causes of  
6 action nor add any new theories of liability.” Mot. at 3, ECF No. 100. Willner contends that the  
7 proposed amendment was precipitated by the testimony of Bonnie Matson, Manpower’s Rule  
8 30(b)(6) witness, which established that all of Manpower’s temporary employees receive wage  
9 statements that are in the same format as the ones that Willner received by mail. Id. at 3-4.

10 Manpower opposes the motion, arguing that Willner seeks the proposed amendment in bad  
11 faith, that the proposed amendment is futile, and that Willner unduly delayed in seeking the  
12 proposed amendment. Manpower contends that one of the previous iterations of the complaint  
13 asserted a section 226 claim for inaccurate wage statements on behalf of all of Manpower’s  
14 employees in California, but Willner later narrowed the scope of that claim to cover only  
15 employees who received their wage statements via mail in order to avoid transfer of this action to  
16 another district where other identical putative class claims were pending. ECF No. 103 at 2-3; see  
17 also ECF No. 28. Manpower contends that Willner’s self-limitation of her section 226 claims  
18 constitutes a waiver of any allegations pertaining to section 226 violations that cover all of  
19 Manpower’s temporary employees. Manpower further argues that Willner unduly delayed in  
20 seeking the proposed amendment because she has known of its factual and legal basis since the  
21 outset of the litigation. Finally, in the event that the Court grants Willner’s request for leave to  
22 amend, Manpower requests that the Court enter an order awarding Manpower the costs and  
23 attorney’s fees it incurred in opposing this motion and precluding Willner from conducting  
24 additional discovery in connection with the newly-expanded section 226 allegations.

25 Willner responds that she has not waived any claims or allegations, because no prior  
26 iteration of the complaint has asserted section 226 claims on behalf of a class that includes all of  
27 Manpower’s employees in California. ECF No. 105. Instead, each of the prior iterations of the  
28 complaint has limited the scope of the section 226 allegations to employees who received their

1 wage statements by mail. Willner further contends that she did not delay in seeking the proposed  
2 amendment, because the basis for the amendment is evidence that she obtained recently through  
3 the deposition of Bonnie Matson.

4 The Court concludes that granting leave to amend is appropriate. Manpower does not  
5 contend that it would be prejudiced by the proposed amendment, which is the factor that carries  
6 the greatest weight in the Rule 15(a) analysis. Instead, Manpower's opposition invites the Court  
7 to deny leave on the grounds of bad faith, futility, and undue delay, but its arguments are  
8 unpersuasive and insufficient to justify denying the requested leave. A review of the previously  
9 filed complaints reveals that Willner's section 226 claims have always been limited to employees  
10 who received their wages via mail. See First Am. Compl. ¶¶ 16, 38, ECF No. 1, Ex. B; Second  
11 Am. Compl. ¶ 2, ECF No. 3; Third Am. Compl. ¶ 5, ECF No. 44. Accordingly, because it is not  
12 the case that Willner previously asserted section 226 claims on behalf of a class that includes all of  
13 Manpower's employees in California, Manpower's arguments of bad faith and waiver are  
14 unsound. Moreover, Willner has provided a justification for the timing of the proposed  
15 amendment, namely that she discovered the evidence necessary to support it during the recent  
16 deposition of Manpower's Rule 30(b)(6) witness. As such, Manpower's arguments of undue  
17 delay also are unavailing. Willner's motion for leave to file the proposed amended complaint is  
18 GRANTED.

19 Manpower's request for sanctions or for an order limiting discovery as a condition to  
20 granting leave to amend is DENIED. The cases that Manpower cites in support of its request  
21 establish that the imposition of sanctions under Rule 15 is appropriate when doing so would  
22 prevent prejudice to the party opposing amendment. See Gen. Signal Corp. v. MCI  
23 Telecommunications Corp., 66 F.3d 1500, 1514 (9th Cir. 1995) (holding that "a district court, in  
24 its discretion, may impose costs pursuant to Rule 15 as a condition of granting leave to amend in  
25 order to compensate the opposing party for additional costs incurred because the original pleading  
26 was faulty" and thus prejudicial to the party opposing amendment); see also Firchau v. Diamond  
27 Nat. Corp., 345 F.2d 269, 275 (9th Cir. 1965) (holding that, in deciding a motion for leave to  
28 amend a pleading, the district court may "prescribe as a condition reasonable terms compensating

[the party opposing amendment] for any loss or expense occasioned by [the] failure to file adequate pleadings in the first instance"). Here, Manpower has made no showing of prejudice; thus, the Court finds that there are no grounds for the imposition of monetary sanctions or the imposition of limits on discovery.

Willner shall file the proposed Fifth Amended Complaint she attached to her motion within five court days of the date this order is filed. The Court will treat the Fifth Amended Complaint as the operative complaint for the purpose of determining the other pending motions in this action.

### **III. MOTION FOR JUDGMENT ON THE PLEADINGS OR SUMMARY JUDGMENT**

#### **A. Legal Standards**

##### **1. Judgment on the Pleadings**

A party may move for judgment on the pleadings "after the pleadings are closed . . . but early enough not to delay trial." Fed. R. Civ. P. 12(c). "A judgment on the pleadings is properly granted when, taking all the allegations in the non-moving party's pleadings as true, the moving party is entitled to judgment as a matter of law." Fajardo v. Cnty. of Los Angeles, 179 F.3d 698, 699 (9th Cir. 1999). "Judgment may only be granted when the pleadings show that it is beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Enron Oil Trading & Transp. Co. v. Walbrook Ins. Co., Ltd., 132 F.3d 526, 529 (9th Cir. 1997) (citations and internal quotation marks omitted).

##### **2. Summary Judgment**

Summary judgment is proper when a "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by citing to depositions, documents, affidavits, or other materials. Fed. R. Civ. P. 56(c)(1)(A). A party also may show that such materials "do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1)(B). An issue is "genuine" only if there is sufficient evidence for a reasonable fact-finder to find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A fact is "material" if the fact may affect the outcome of the case. Id. at 248. "In

1 considering a motion for summary judgment, the court may not weigh the evidence or make  
2 credibility determinations, and is required to draw all inferences in a light most favorable to the  
3 non-moving party.” Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997).

4 Where the party moving for summary judgment would bear the burden of proof at trial,  
5 that party bears the initial burden of producing evidence that would entitle it to a directed verdict if  
6 uncontested at trial. See C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc., 213 F.3d 474,  
7 480 (9th Cir. 2000). Where the party moving for summary judgment would not bear the burden of  
8 proof at trial, that party bears the initial burden of either producing evidence that negates an  
9 essential element of the non-moving party’s claim, or showing that the non-moving party does not  
10 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial. If  
11 the moving party satisfies its initial burden of production, then the non-moving party must produce  
12 admissible evidence to show that a genuine issue of material fact exists. See Nissan Fire &  
13 Marine Ins. Co. v. Fritz Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000). The non-moving party  
14 must “identify with reasonable particularity the evidence that precludes summary judgment.”  
15 Keenan v. Allan, 91 F.3d 1275, 1279 (9th Cir. 1996). Indeed, it is not the duty of the district court  
16 to “to scour the record in search of a genuine issue of triable fact.” Id. “A mere scintilla of  
17 evidence will not be sufficient to defeat a properly supported motion for summary judgment;  
18 rather, the nonmoving party must introduce some significant probative evidence tending to support  
19 the complaint.” Summers v. Teichert & Son, Inc., 127 F.3d 1150, 1152 (9th Cir. 1997) (citation  
20 and internal quotation marks omitted). If the non-moving party fails to make this showing, the  
21 moving party is entitled to summary judgment. Celotex Corp. v. Catrett, 477 U.S. 317, 323  
22 (1986).

23           **B. Analysis**

24 Willner moves for judgment on the pleadings or for summary judgment with respect to  
25 four of the five claims that Willner asserts in the operative complaint.<sup>2</sup> ECF No. 76. Willner, on  
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27 \_\_\_\_\_  
28 <sup>2</sup> Though Manpower’s motion references Willner’s Third Amended Complaint (“TAC”), as  
opposed to the operative complaint, the motion still applies to the operative complaint because the  
claims in both pleadings are identical with the exception of the scope of the class claims pertaining

1 the other hand, moves for summary judgment on her claim for PAGA penalties in connection with  
2 Manpower's purported violations of section 226. ECF No. 101. The only claim not at issue in the  
3 motions is Willner's claim for violations of California Labor Code sections 201 and 203 for failure  
4 to pay timely wages due at separation.

5 **1. Late Payment of Wages under Section 201.3(b)(1)**

6 Willner alleges that Manpower failed to pay timely *weekly* wages to its temporary  
7 employees who receive their paychecks via U.S. mail in violation of section 201.3(b)(1) of the  
8 Labor Code. FAC ¶¶ 24-28. Manpower allegedly mails paychecks to employees who choose to  
9 receive their paychecks via mail "on the payday following the week in which they worked," which  
10 results in employees receiving their paychecks "at least two or three days after the payday of the  
11 following calendar week." Id. ¶ 27. Willner avers that she "routinely received her paychecks  
12 from [Manpower] two to three days after the payday of the calendar week following the week in  
13 which she worked," and that her "paychecks arrived in an envelope postmarked from Texas with a  
14 date that was two to three days prior to the date that she received her paycheck." Id. Willner  
15 seeks penalties under California Labor Code section 203 in connection with these purported  
16 violations of section 201.3(b)(1). Id.

17 Manpower moves for judgment on the pleadings or for summary judgment with respect to  
18 this claim on the ground that penalties under section 203 are not recoverable for violations of  
19 section 201.3(b)(1). Manpower argues that the language of section 203(a), which includes the  
20 phrase "wages of an employee who is discharged or who quits," limits the applicability of that  
21 statute to violations of sections 201.3(b)(4) and (b)(5) of the California Labor Code, which govern  
22 the timing of *final* wages, as opposed to *weekly* wages, to temporary services employees upon the  
23 termination of employment.

24 Willner opposes the motion, arguing that section 203(a) penalties are not limited to  
25 violations of section 201.3(b)(4) and (b)(5), because section 203 does not contain any language  
26 that limits its scope. Willner argues that the inclusion of the phrase "wages of an employee who is

27  
28 to Manpower's purported violations of section 226, as discussed in section II of this order.

1 discharged or who quits" in section 203(a) merely requires an employee to wait to recover  
2 penalties under that section until after the employment relationship has ended. As such, Willner  
3 contends that an employee may recover section 203(a) penalties for violations of 201.3(b)(1), so  
4 long as she seeks to recover such penalties after the employment relationship has ended.

5 The Court concludes that a temporary employee cannot recover penalties under section  
6 203(a) at any time for the late payment of weekly wages in violation of section 203.1(b)(1)  
7 because: (1) the plain language of section 203(a) does not clearly and unmistakably indicate that  
8 such a right exists; (2) Willner has not shown that the legislative history of section 203.1 clearly  
9 indicates that the legislature intended to create such a right; and (3) Willner has not shown that any  
10 state or federal court has ever held that such a right exists.

11 Under California law, the "[a]doption of a regulatory statute does not automatically create  
12 a private right to sue for damages resulting from violations of the statute. Such a private right of  
13 action exists only if the language of the statute or its legislative history clearly indicates the  
14 Legislature intended to create such a right to sue for damages. If the Legislature intends to create  
15 a private cause of action, [courts] generally assume it will do so directly . . . in clear,  
16 understandable, unmistakable terms . . ." Vikco Ins. Servs., Inc. v. Ohio Indem. Co., 82 Cal. Rptr.  
17 2d 442, 447 (Cal. Ct. App. 1999) (citation and internal quotation marks omitted).

18 Here, neither section 201.3 nor section 203, which Section 201.3 incorporates by reference,  
19 clearly and unmistakably permits a temporary services employee to recover penalties for the  
20 untimely payment of weekly wages. Instead, as will be discussed below, the penalties in section  
21 203(a) are expressly limited to the late payment of *final* wages owed to employees who have been  
22 discharged or who have quit.

23 Section 203.1 contains three provisions that govern the timing of the payment of wages to  
24 temporary services employees. The first of these provisions is section 203.1(b)(1), which  
25 regulates the payment of weekly wages. This is the only provision of section 203.1 that is at issue  
26 in this action. It provides that:

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1 [I]f an employee of a temporary services employer is assigned to work for a client,  
2 that employee's wages are due and payable no less frequently than weekly,  
3 regardless of when the assignment ends, and wages for work performed during any  
4 calendar week shall be due and payable not later than the regular payday of the  
5 following calendar week. A temporary services employer shall be deemed to have  
6 timely paid wages upon completion of an assignment if wages are paid in  
7 compliance with this subdivision.

8 Cal. Lab. Code 203.1(b)(1) (emphasis added).

9 The other two provisions, section 203.1(b)(4) and section 203.1(b)(5), regulate the timing  
10 of the payment of *final* wages to a temporary employee *after* the employment relationship has  
11 ended.

12 Section 203.1(b)(4) applies to the payment of final wages to employees who have been  
13 discharged. It provides that:

14 If an employee of a temporary services employer is assigned to work for a client  
15 and is discharged by the temporary services employer or leasing employer, wages  
16 are due and payable as provided in Section 201.

17 Cal. Lab. Code. 203.1(b)(4).

18 Section 203.1(b)(5), in turn, governs the timing of the payment of final wages to  
19 employees who have quit. It provides that:

20 If an employee of a temporary services employer is assigned to work for a client  
21 and quits his or her employment with the temporary services employer, wages are  
22 due and payable as provided in Section 202.

23 Cal. Lab. Code. 203.1(b)(5).

24 Section 201.3(c), the statute's enforcement provision, provides that:

25 A temporary services employer who violates this section shall be subject to the  
26 civil penalties provided for in Section 203, and to any other penalties available at  
27 law.

28 Cal. Lab. Code. 203.1(c).

Section 203(a), in turn, contains the civil penalties referenced in Section 201.3(c). It  
provides that:

If an employer willfully fails to pay, without abatement or reduction, in accordance  
with Sections 201, 201.3, 201.5, 202, and 205.5, *any wages of an employee who is  
discharged or who quits*, the wages of the employee shall continue as a penalty  
from the due date thereof at the same rate until paid or until an action therefor is  
commenced; but the wages shall not continue for more than 30 days.

Cal. Lab. Code § 203(a) (emphasis added).

1       The plain language of section 203(a) clearly indicates that its penalties are limited to  
2 violations of sections 201.3(b)(4) and 201.3(b)(5). Specifically, section 203(a) provides that its  
3 penalties apply to the willful failure to pay “any wages of an employee who is discharged or who  
4 quits.” The terms “discharged” and “quits” are direct and parallel references to the provisions of  
5 sections 201.3(b)(4) and 201.3(b)(5), respectively.

6       The inclusion of the phrase “any wages of an employee who is discharged or who quits” in  
7 section 203(1) undermines Willner’s argument that the penalties in section 203(a) also apply to  
8 violations of section 201.3(b)(1), which governs the timing of *weekly* wages *prior* to the  
9 termination of the employment relationship. If the legislature had intended section 203(a) to apply  
10 to 201.3(b)(1)’s weekly wages provision, then the legislature simply could have omitted the phrase  
11 “any wages of an employee who is discharged or who quits” from section 203(a). The inclusion  
12 of this language, at best, creates ambiguity as to whether the penalties in section 203(a) apply to  
13 section 201.3(b)(1). In light of this ambiguity, the Court cannot conclude that the legislature  
14 “clearly” and “unmistakably” intended the penalties in section 203(a) to apply to violations of  
15 section 201.3(b)(1). See *Vikco*, 82 Cal. Rptr. 2d at 447 (“If the Legislature intends to create a  
16 private cause of action, we generally assume it will do so “directly . . . in clear, understandable,  
17 unmistakable terms[.]”) (citation and internal quotation marks omitted).

18       Willner urges the Court to interpret the phrase “an employee who is discharged or who  
19 quits” as a prohibition on the recovery of section 203(a) penalties prior to the termination of the  
20 employment relationship. In other words, Willner contends that the “effect” of the phrase “an  
21 employee who is discharged or who quits” is “merely” to provide that penalties for “the late  
22 payment of weekly wages cannot be recovered until *after* the employee’s termination.” Opp’n at 5  
23 (emphasis in original). This interpretation of the statute leads to an absurd result, because it would  
24 force employees to choose between continued employment or the enforcement their right to  
25 receive timely weekly wages, as only those who have terminated their temporary services  
26 employment would be able to recover penalties for violations of section 201.3(b)(1), while  
27 employees who continue to have an ongoing employment relationship with their temporary  
28 services employer would not. Because Willner has not cited any authority or any portion of the

1 legislative history of section 203(a) that supports her reading of the relevant statutes, her  
2 interpretation must be rejected.<sup>3</sup>

3 Finally, Willner has not shown that any state or federal court has held that section 203(a)  
4 penalties are recoverable for an employer's failure to pay weekly wages on time. On the other  
5 hand, Manpower has shown that courts in this circuit routinely interpret Section 203(a) as  
6 applying only to violations of the right to receive *final* wages after the employment relationship  
7 has ended. See, e.g., Porch v. Masterfoods, USA, Inc., 685 F. Supp. 2d 1058, 1075 (C.D. Cal.  
8 2008) (holding that "waiting time penalties are only available when an employee is discharged or  
9 quits a position" and that no genuine issue of material fact exists with respect to a claim for  
10 Section 203(a) penalties when the "[p]laintiff fails to point out any [final] wages that he is due that  
11 [d]efendant has failed to pay").

12 Accordingly, because a temporary employee cannot recover penalties under section 203(a)  
13 at any time for violations of section 203.1(b)(1), Willner's claim for penalties under Section  
14 203(a) for section 201.3(b)(1) violations fails as a matter of law.<sup>4</sup> Manpower's motion for  
15 judgment on the pleadings with respect to this claim is GRANTED.

16 **2. Failure to Furnish Accurate Wage Statements under Section 226(a)**

17 Willner alleges that Manpower "knowingly and intentionally" failed to furnish to her and  
18 the putative class members itemized wage statements that include the inclusive dates of the period  
19 for which their employment was paid, as well as Manpower's name and address, as required by  
20 California Labor Code section 226(a). FAC ¶¶ 29-31. Willner seeks damages, injunctive relief,  
21 and attorney's fees and costs under Section 226(e) in connection with this claim.

22 Section 226(a) requires every employer to furnish each of its employees an accurate  
23 itemized statement, "either as a detachable part of the check, draft, or voucher paying the

24  
25 <sup>3</sup> Though Manpower attaches to its motion copies of a bill report, transcripts of the hearings before  
26 the Senate Committee on Labor and Industrial Relations, and a senate analysis pertaining to the  
27 genesis of Section 201.3, none of these documents discusses the application of Section 203(a)  
28 penalties to violations of Section 201.3(b). See Kane Decl., Ex. B-E, ECF No. 76.

<sup>4</sup> The only available remedy for violations of Section 201.3(b)(1) is found in California Labor  
Code Section 201.

1 employee's wages, or separately when wages are paid by personal check or cash," that shows,  
2 among other things, (1) "the inclusive dates of the period for which the employee is paid," and (2)  
3 "the name and address of the legal entity that is the employer." See Cal. Labor Code § 226(a)(6)  
4 & (a)(8).

5 An employee whose rights under section 226(a) are violated may recover damages under  
6 Section 226(e), which provides that:

7 An *employee suffering injury* as a result of a *knowing and intentional failure* by an  
8 employer to comply with subdivision (a) is entitled to recover the greater of all  
9 actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
10 occurs and one hundred dollars (\$100) per employee for each violation in a  
11 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars  
12 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

13 Cal. Lab. Code § 226(e)(1) (emphasis added).

14 Thus, a claim for damages under Section 226(e) requires a showing of three elements: (1) a  
15 violation of Section 226(a); (2) that is "knowing and intentional"; and (3) a resulting injury. See  
16 Reinhardt v. Gemini Motor Transp., 879 F. Supp. 2d 1138, 1141 (E.D. Cal. 2012).

17 Manpower moves for judgment on the pleadings or for summary judgment on this claim  
18 on the ground that Willner cannot establish any of these elements. Willner opposes the motion,  
19 arguing that the evidence before the Court satisfies her burden of proof with respect to each of the  
20 three elements.

21 The Court concludes that Manpower's motion for judgment on the pleadings or for  
22 summary judgment must be DENIED, because a genuine issue of material fact exists with respect  
23 to whether Manpower's violations of section 226(a) were knowing and intentional.

#### 24           a.       **Violation of Section 226(a)**

25 Willner argues that the wage statements at issue violate section 226(a) in two ways: (1)  
26 they fail to contain the "inclusive dates of the period for which the employee is paid"; and (2) they  
27 fail to state Manpower's address.

28 Manpower argues that the wage statements it furnished to Willner "substantially" comply  
29 with section 226(a), and therefore, such statements do not violate Section 226(a). In support of its  
argument, Manpower has attached to its motion copies of the earnings statements that it sent to

1 Willner. See Matson Decl. ¶ 6 & Ex. D. These earnings statements were attached to each of the  
2 paychecks that Willner received. See Matson Decl. ¶ 6 & Ex. C (copy of earnings statement  
3 attached to Willner's paycheck); Matson Decl. ¶ 4 & Ex. B (copy of envelope containing wage  
4 statement). Willner does not dispute the authenticity of these materials.

5 Upon review of the materials submitted by Manpower, the Court concludes that the  
6 statements at issue do not contain the requisite "the inclusive dates of the period for which the  
7 employee is paid" under Section 226(a)(6), because only the pay period end date, and not the start  
8 date of the pay period, is included on the statement. See Matson Decl. ¶ 6 & Ex. C. Manpower  
9 argues that it satisfied the "inclusive dates" requirement of Section 226(a)(6) by including "every  
10 work date" for which Willner was paid. Mot. at 21. This argument is unpersuasive, because the  
11 dates on which an employee worked in any given pay period do not necessarily shed light on the  
12 date on which the pay period began, particularly in the context of temporary employment. The  
13 "inclusive dates" required by Section 226(a)(6) refer to the start and end date of the pay period and  
14 necessarily must include the start date of the pay period in order to give meaning to the word  
15 "inclusive." A failure to include the start date of the pay period in a statement constitutes a  
16 violation of Section 226(a)(6). See *McKenzie v. Fed. Exp. Corp.*, 765 F. Supp. 2d 1222, 1229  
17 (C.D. Cal. 2011) (holding that the defendant "violated Labor Code Section 226(a)(6) by failing to  
18 include the beginning date for the pay period in its wage statements").

19 The Court also concludes that the statements do not contain Manpower's address as  
20 required by Section 226(a)(8). Manpower argues that it fulfilled its obligation to include its  
21 address on the statements because its address appears on the checks attached to the statements and  
22 on the front of the envelopes containing the statements.<sup>5</sup> Mot. at 21-22. This argument is  
23 unavailing, because Section 226(a)(8) expressly requires the name and address of the employer to  
24 be written on the wage statement itself. Anything less fails to comply with Section 226(a)(8). See

25 \_\_\_\_\_  
26 <sup>5</sup> Willner argues that the address on the paycheck and on the envelope is incorrect because it is the  
27 address of a subsidiary of Manpower and not of Manpower itself. ECF No. 81 at 16-17. The  
28 Court does not reach the question of whether the address at issue is incorrect because the Court  
finds that Manpower's wage statements failed to comply with Section 226(a)(8) because they do  
not contain *any* address.

1       Elliot v. Spherion Pac. Work, LLC, 572 F. Supp. 2d 1169, 1179 (C.D. Cal. 2008) (holding that,  
2 under Section 226(a)(8), “an employer must include on *its wage statements* ‘the name and address  
3 of the legal entity that is the employer.’”) (citation omitted) (emphasis added).

4           Accordingly, the evidence before the Court establishes that Manpower’s wage statements  
5 violated both Section 226(a)(6) and Section 226(a)(8), which satisfies the first element of  
6 Willner’s claim for damages under Section 226(e).

7                   **b.      Knowing and Intentional**

8           Manpower argues that it is entitled to summary judgment because Willner does not have  
9 any evidence to establish that Manpower’s section 226(a) violations were knowing and  
10 intentional.

11           On the other hand, Willner argues that “intent can be shown with evidence of an  
12 employer’s failure to perform a required act, e.g. the failure to issue wage statements with the  
13 information required by Section 226(a).” ECF No. 81 at 19. Willner contends that, to satisfy this  
14 element, “[she] need only show that Manpower intended to provide its temporary workers in  
15 California with the wage statements at issue in this lawsuit.” Id. After the Court held oral  
16 argument on Manpower’s motion, Willner filed a motion urging the Court to consider excerpts of  
17 the deposition of Bonnie Matson, Willner’s Rule 30(b)(6) witness. ECF No. 95. The ground for  
18 the motion is that the transcript of Matson’s deposition did not become available to Willner until  
19 after oral argument took place. Willner argues that the excerpts of Matson’s deposition are  
20 “directly relevant” to her wage-statement claims, because they show that Matson and Manpower  
21 were aware that the wage statements at issue did not contain the pay period start date or  
22 Manpower’s address. ECF No. 95, Ex. A, Matson Dep. at 33-37; 54-56, 59-61, 64, 133-34.

23           Manpower opposes Willner’s motion to submit excerpts of Matson’s deposition on the  
24 ground that the motion is untimely and procedurally defective, as Willner did not seek additional  
25 time to obtain or to submit additional facts under Rule 56(d) either in her opposition or during oral  
26 argument. ECF No. 99. Manpower further contends that, even if these excerpts raised a genuine  
27 issue of material fact as to the “knowing and intentional” element, Willner’s section 226 claim  
28 “still fails” because it “substantially complied with the requirements of section 226(a) and because

1 Willner did not suffer any injury as a result of any violations of section 226(a). ECF No. 116 at 1.

2 The Court will consider the late-filed excerpts of Matson's deposition in order to resolve  
3 the issues raised in Manpower's motion on the merits.<sup>6</sup>

4 The question of whether the "knowing and intentional" element is satisfied here turns on  
5 whether the phrase "knowing and intentional" requires evidence beyond a showing that the  
6 defendant violated Section 226(a). Manpower argues that it does; Willner argues that it does not.  
7 The cases that Willner cites in support of the proposition that nothing more is required are not  
8 instructive, because they interpret terms other than the one at issue. See Heritage Residential  
9 Care, Inc. v. Div. of Labor Standards Enforcement, 120 Cal. Rptr. 3d 363, 368 (Cal. Ct. App.  
10 2011) (construing the term "inadvertent" in California Labor Code Section 226.3); Rd. Sprinkler  
11 Fitters Local Union No. 669 v. G & G Fire Sprinklers, Inc., 102 Cal. App. 4th 765, 781, 125 Cal.  
12 Rptr. 2d 804 (Cal. Ct. App. 2002) (construing the term "willful" in California Labor Code Section  
13 203 to mean "intentionally failed or refused to perform an act which was required to be done").  
14 Manpower does not cite to any authority that establishes the meaning of "knowing and  
15 intentional."

16 No court has expressly defined the terms "knowing and intentional" in the context of  
17 section 226. The Court therefore starts by examining the language of the statute itself. Section  
18 226(e)(1) provides that:

19 An employee suffering injury as a result of a *knowing and intentional failure* by an  
20 employer to comply with subdivision (a) is entitled to recover . . ."  
Cal. Lab. Code § 226(e)(1) (emphasis added).

21 Section 226(e)(3) states:

22 [F]or purposes of this subdivision, a "*knowing and intentional failure*" does not  
23 include an isolated and unintentional payroll error due to a clerical or inadvertent  
24 mistake. In reviewing for compliance with this section, the factfinder may consider  
25 as a relevant factor whether the employer, prior to an alleged violation, has adopted  
and is in compliance with a set of policies, procedures, and practices that fully  
comply with this section.

26  
27 <sup>6</sup> The Court granted Plaintiff leave to file the deposition excerpts, and then permitted Defendant to  
28 file a sur-reply addressing only the additional evidence, which Defendant did. See ECF Nos. 115,  
116.

1 Cal. Lab. Code § 226(e)(3) (emphasis added).

2 When reading Sections 226(e)(1) and (e)(3) in conjunction, three inferences can reasonably  
3 be drawn as to the definition of “knowing and intentional.” First, the phrase “knowing and  
4 intentional” in Section 226(e)(1) must be read to require something more than a violation of  
5 Section 226(a) alone. If the legislature had intended to allow an employee to recover damages for  
6 an employer’s violation of Section 226(a) without having to make any showing beyond a showing  
7 of the Section 226(a) violation itself, then the legislature could simply have omitted the qualifier  
8 “knowing and intentional” before the word “failure.” Willner’s proposed construction of Section  
9 226(e)(1) is unsound because it essentially excises the qualifier “knowing and intentional” from  
10 the statute; this contravenes the canon of statutory construction requiring that “a construction  
11 making some words surplusage is to be avoided.” See Steketee v. Lintz, Williams & Rothberg, 38  
12 Cal. 3d 46, 52 (1985).

13 Second, a “knowing and intentional” failure must be more than an “isolated and  
14 unintentional payroll error due to a clerical or inadvertent mistake.” Indeed, violations of Section  
15 226(a) caused by “isolated and unintentional payroll errors” are not subject to damages under  
16 Section 226(e) and therefore do not fall within the scope of “knowing and intentional.” See Cal.  
17 Lab. Code 226(e)(3).

18 Third, the determination of whether a violation of Section 226(a) was “knowing and  
19 intentional” is a factual one. Section 226(e)(3) explicitly refers to “the factfinder” and to the  
20 factors that the factfinder may consider in determining whether a violation was knowing and  
21 intentional, namely “whether the employer, prior to an alleged violation, has adopted and is in  
22 compliance with a set of policies, procedures, and practices that fully comply with this section.”  
23 See Cal. Lab. Code 226(e)(3).

24 In addition to these inferences, the Court looks to the definition of “willingly and  
25 knowingly”—a substantially similar phrase to “knowing and intentional”—that California courts  
26 have adopted in the context of interpreting labor statutes containing that phrase. See, e.g., Wang  
27 v. Div. of Labor Standards Enforcement, 219 Cal. App. 3d 1152, 1156-57 (1990) (construing  
28 “willingly and knowingly” in the context of California Labor Code Section 1021.5). California

1 courts have defined that phrase as “a knowledge that the facts exist which bring the act or  
2 omission within the provisions of a statute.” Id.

3 Consistent with the foregoing, for purposes of this action, the Court concludes that a  
4 “knowing and intentional” violation requires a showing that the defendant knew that facts existed  
5 that brought its actions or omissions within the provisions of section 226(a) -- i.e., that Manpower  
6 knew that its wage statements did not contain the inclusive dates of the period for which its  
7 employees were paid, and knew that they did not contain Manpower’s address. Willner is not  
8 required to demonstrate that Manpower knew that this conduct, if otherwise proven, was unlawful.  
9 See Perez v. Safety-Kleen Sys., Inc., Case No. 07-cv-0886PJH, 2007 WL 1848037, at \*9 (N.D.  
10 Cal. June 27, 2007) (holding that the defendant’s lack of awareness as to the illegality of its  
11 deficient wage statements is irrelevant to the determination of whether the “knowing and  
12 intentional” element is satisfied because all that is required to satisfy that element is knowledge  
13 that the defendant “knowingly and intentionally provide[d] wage statements containing the  
14 incorrect total hours worked”). The question of whether the defendant possessed this requisite  
15 awareness is a question of fact.

16 The Court now turns to the question of whether the “knowing and intentional” element is  
17 satisfied here. Manpower argues that Willner lacks evidence to show that its noncompliance with  
18 section 226(a) was knowing and intentional. Willner, on the other hand, points to the declaration  
19 of Bonnie Matson, a payroll employee of Manpower, which states that Manpower mailed the  
20 deficient wage statements to Willner and the putative class members. Opp’n at 19-20. Willner  
21 implies that this declaration establishes that the 226(a) violations at issue were knowing and  
22 intentional because the declaration “does not state that there is any mistake or clerical error with  
23 respect to the format of these wage statements.” Id. at 20. Willner also argues that the requisite  
24 knowledge and intent is satisfied because the California Division of Labor Standards Enforcement  
25 (“DLSE”) posts an exemplar wage statement on its website, and this exemplar contains the  
26 employer’s address. Id. Finally, Willner points to excerpts of Bonnie Matson’s deposition to  
27 show that Matson and Manpower were aware that the wage statements at issue did not contain the  
28 pay period start date or Manpower’s address. ECF No. 95, Ex. A, Matson Dep. at 33-37; 54-56,

59-61, 64, 133-34.

The Court concludes that a genuine issue of material fact exists with respect to whether this element is satisfied, as Willner has submitted evidence showing that Manpower’s violations of section 226(a) were knowing and intentional. Cf. Harris v. Vector Mktg. Corp., 656 F. Supp. 2d 1128, 1146 (N.D. Cal. 2009) (granting summary judgment in favor of defendant with respect to section 226(e) claim because the plaintiff submitted “no evidence that [the defendant’s] conduct was a knowing or willful violation of § 226(a)”). The excerpts of Matson’s deposition show that Manpower was aware that its wage statements did not contain the inclusive pay period dates and its address. Additionally, the declaration of Bonnie Matson establishes that Manpower intentionally mailed the statements at issue to its employees. These facts are sufficient to deny Manpower’s motion. See Perez, 2007 WL 1848037, at \*9 (holding that a question of fact exists as to the “knowing and intentional” element because the record contained facts showing that the defendant “knowingly and intentionally provide[d] wage statements containing the incorrect total hours worked”).

**c. Resulting Injury**

Section 226(e)(2)(B) provides in part that:

An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and *the employee cannot promptly and easily determine from the wage statement alone* one or more of the following . . . The name and address of the employer . . . or [the inclusive dates of the pay period].

Cal. Lab. Code 226(e)(2)(B)(i) & (iii) (emphasis added).

The Court concludes that, based on the wage statements submitted by Manpower, an employee cannot promptly determine from the wage statements alone either the start date of the pay period or Manpower's address, as discussed above. Accordingly, the evidence before the Court establishes that Willner suffered injury within the meaning of Section 226(e).

### **3. Unlawful Prong of the UCL**

The Unfair Competition Law (“UCL”) prohibits “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising.” Cal. Bus. & Prof.

1 Code § 17200. An act is unlawful under the UCL if it violates another law. “[V]irtually any  
2 state, federal or local law can serve as the predicate for an action under section 17200.” Davis v.  
3 HSBC Bank Nev., N.A., 691 F.3d 1152, 1168 (9th Cir. 2012) (citation omitted).

4 Willner alleges that Manpower violated the unlawful prong of the UCL because (1) it  
5 failed to provide accurate wage statements to all of its temporary employees in violation of section  
6 226(a); and (2) it failed to pay timely weekly wages to its temporary employees who received their  
7 checks via mail in violation of section 201.3(b)(1). As a remedy, she seeks an order enjoining  
8 Manpower from further violating the Labor Code. Id.

9           **a.       Violations of Section 226(a)**

10          Manpower moves for summary judgment on this claim on the ground that it is “wholly  
11 derivative” of Willmer’s claim for damages under section 226(e) and therefore fails for the same  
12 reasons that the latter claim failed.

13          The Court concludes that Manpower’s motion for summary judgment must be DENIED as  
14 to this claim. As discussed above, the Court has held that Manpower violated section 226(a) by  
15 failing to provide the putative class members with wage statements containing its address and the  
16 pay period start date. Manpower’s motion for summary judgment fails in light of this holding.<sup>7</sup>

17           **b.       Violations of Section 201.3(b)(1)**

18          Manpower moves for summary judgment on this claim on the ground that it is “wholly  
19 derivative” of Willner’s claim under section 201.3(b)(1) and therefore fails for the same reasons  
20 that the latter claim failed. Alternatively, Manpower argues that it is entitled to summary  
21 judgment on this claim because Willner has no evidence to establish that it violated section  
22 201.3(b)(1).

23          Willner responds that Manpower’s motion cannot be granted on the basis that she is barred  
24 from seeking penalties under section 203 for Manpower’s purported violations of section

25 \_\_\_\_\_  
26 <sup>7</sup> That a genuine issue of material fact exists with respect to whether the section 226(a) were  
27 knowing and intentional does not affect this conclusion, because the “knowing and intentional”  
28 element is not a part of section 226(a), which is the section upon which Willner’s UCL claim is  
predicated; rather, this element applies only to the extent that an employee seeks damages under  
section 226(e) in connection with violations of section 226(a).

1 201.3(b)(1), because “any absence of a private right of action to enforce Section 201.3 has no  
2 bearing on Plaintiff’s ability to seek . . . relief under the UCL for violation of that section.” ECF  
3 No. 81 at 22. Willner also argues that a genuine issue of material fact exists with respect to  
4 Manpower’s payday, the timing of the mailing of the paychecks at issue, and the willfulness of  
5 Manpower’s conduct.

6 The Court concludes that Manpower’s motion cannot be granted on the basis that Willner  
7 cannot recover penalties under section 203 for violations of section 201.3, because a party may  
8 bring a UCL claim under the unlawful prong even if the predicate law does not provide for a  
9 private cause of action. See Chabner v. United of Omaha Life Ins. Co., 225 F.3d 1042, 1048-50  
10 (9th Cir. 2000) (holding that, to bring a claim under the unlawful prong of the UCL, “[i]t does not  
11 matter whether the underlying statute also provides for a private cause of action; section 17200  
12 can form the basis for a private cause of action even if the predicate statute does not”) (citation  
13 omitted).

14 Manpower’s motion also cannot be granted because a genuine issue of material fact exists  
15 with respect to whether Manpower violated section 201.3(b)(1). The determination of whether  
16 Manpower violated section 201.3(b)(1) turns on the definition of “due and payable” under section  
17 201.3(b)(1). Section 201.3(b)(1) provides that wages to temporary employees are “due and  
18 payable not later than the regular payday of the following calendar week.” Cal. Lab. Code §  
19 201.3(b)(1). In the context of wages that are paid via U.S. mail, Manpower contends that “due and  
20 payable” requires that the wages be mailed by the payday, whereas Willner contends that the  
21 phrase requires that the wages be delivered by the payday.

22 No state or federal court has defined “due and payable” within the meaning of section  
23 201.3(b)(1). The Court therefore turns to other sections of the Labor Code for guidance in  
24 resolving this issue. Statutes that govern the payment of wages in other contexts provide that,  
25 when the payment of wages is made by mail, the date of mailing constitutes the date of payment.  
26 See Cal. Lab. Code § 202(a) (providing that when employee who quits requests payment by mail,  
27 “[t]he date of the mailing shall constitute the date of payment for purposes of the requirement to  
28 provide payment within 72 hours of the notice of quitting”); Cal. Lab. Code § 201.5(c) (providing

1 that when an employer or employee in motion picture industry chooses payment of wages by mail,  
2 “[t]he payment shall be deemed to have been made on the date that the employee’s wages are  
3 mailed to the employee”); Cal. Lab. Code § 201.7 (proving that when an employer or employee in  
4 oil drilling industry chooses payment of wages by mail, “the date of mailing is the date of  
5 payment”). Because these statutes are sufficiently similar in language and purpose to the statute at  
6 issue here, the Court concludes that, in the context of the payment of wages via mail in connection  
7 with section 201.3(b)(1), the phrase “due and payable” refers to the date on which the wages are  
8 mailed, not delivered.<sup>8</sup>

9 Here, a genuine issue of material fact exists with respect to whether Manpower mailed  
10 paychecks to Willner by the payday. Even assuming that Manpower’s regular payday was Friday,  
11 as Manpower contends, Willner has pointed to evidence showing that Manpower mailed at least  
12 one paycheck to her after the payday. See Matson Decl., Ex. D, MAN000095 (check issued on  
13 January 5, 2011, for work performed from December 20, 2010, to December 23, 2010, where the  
14 Friday payday would have been on December 31, 2010). Accordingly, Manpower’s motion must  
15 be DENIED.<sup>9</sup>

#### 16 4. PAGA

17 Under PAGA, a plaintiff may bring a representative action as an “aggrieved employee” on  
18 behalf of herself and other current or former employees and may seek civil penalties for Labor  
19 Code violations by an employer. See Cal. Lab. Code § 2699(a) & (i).

20 Willner alleges that she is an “aggrieved employee” under PAGA and seeks penalties  
21 based on Manpower’s failure to provide accurate wage statements in violation of section 226(a)

22  
23 <sup>8</sup> As discussed during oral argument, this interpretation of section 203.1(b) is consistent with the  
24 common law mailbox rule, which provides “that the proper and timely mailing of a document  
25 raises a rebuttable presumption that the document has been received by the addressee in the usual  
time.” Schikore v. BankAmerica Supplemental Ret. Plan, 269 F.3d 956, 961 (9th Cir. 2001).

26 <sup>9</sup> To the extent that the parties argue that willfulness is a necessary element to a claim for  
27 violations of section 201.3(b)(1), those arguments are misplaced. Willfulness is a required  
element only when an employee seeks penalties under section 203. As discussed in section  
III.B.1, the Court has concluded that section 203 is inapplicable to violations of section  
201.3(b)(1). To be actionable under the unlawful prong of the UCL, Willner’s claim for the late  
28 payment of wages need only satisfy the elements of section 201.3(b)(1).

1 and to pay timely weekly wages in violation of section 201.3(b)(1). FAC ¶¶ 37-40. The  
2 allegations supporting these claims are the same as the ones supporting her claims for violations of  
3 Section 201.3(b)(1) and Section 226(a). See id. ¶ 36.

4           **a.       Section 226(a)**

5           Manpower moves for judgment on the pleadings or for summary judgment on Willner's  
6 PAGA claim for violations of section 226(a) on the ground the claim fails for the same reasons  
7 that Willner's claim for damages under section 226(e) failed.

8           Willner also moves for summary judgment on this claim. She argues that a claim for  
9 PAGA penalties requires only a showing of a violation of section 226(a) and does not require a  
10 showing of injury under section 226(e). Willner further argues that certification under Rule 23 is  
11 not required to pursue a representative claim for PAGA penalties.

12           Manpower opposes Willner's motion for summary judgment. First, it contends that  
13 Willner failed to exhaust her administrative remedies because she allegedly failed to give notice to  
14 Manpower of its violations of section 226(a). Manpower contends that, instead of giving notice to  
15 Manpower itself, Willner gave notice to Manpower's outside counsel, which is insufficient under  
16 PAGA's notice requirements. Second, Manpower contends that the putative classes must be  
17 certified under Rule 23 before Willner can seek summary judgment on the representative PAGA  
18 claims she brings on behalf of the putative class members. Finally, Manpower contends that  
19 Willner must establish that she suffered injury in order to recover PAGA penalties for violations  
20 of section 226(a).

21           The Court concludes that Willner's motion for summary judgment must be GRANTED.

22           First, PAGA requires every aggrieved employee seeking penalties to give notice of her  
23 PAGA claim in writing to both the Labor and Workforce Development Agency ("LWDA") and to  
24 her employer. See Cal. Lab. Code § 2699.3(a)(1). The purpose of this notice requirement is to  
25 alert both the employer and the LWDA of the alleged Labor Code violations so that the  
26 circumstances giving rise to the violations can be investigated or cured. See Harris v. Vector  
27 Mktg. Corp., Case No. 08-5198 EMC, 2010 WL 56179, at \*2 (N.D. Cal. Jan. 5, 2010). Here,  
28 Willner has shown that she gave notice in writing of her PAGA claims and their bases to

1 Manpower's attorney, Matthew Kane. Hanson Decl. ¶ 2 & Ex. 1. This is sufficient to establish  
2 compliance with PAGA's notice requirements given that Manpower points to no evidence  
3 showing that Kane never forwarded this notice to Manpower, or that Manpower did not receive  
4 timely notice of Willner's PAGA claims. At this stage of the litigation, untimely notice cannot be  
5 a dispositive issue.<sup>10</sup>

6 Second, though the Ninth Circuit has not yet decided whether certification under Rule 23 is  
7 required to bring a representative PAGA claim, the vast majority of courts in this district that have  
8 addressed the issue have held that "representative PAGA claims need not be certified under Rule  
9 23 to proceed" in light of the purpose of a PAGA representative action, which is "to vindicate the  
10 public through the imposition of civil penalties as opposed to conferring a private benefit upon the  
11 plaintiff and the represented employees."<sup>11</sup> Gallardo v. AT & T Mobility, LLC, 937 F. Supp. 2d  
12 1128, 1137 (N.D. Cal. 2013) (citing cases) (internal quotation marks omitted). The Court finds  
13 this reasoning persuasive and adopts it in every respect. Accordingly, Willner need not comply  
14 with the requirements of Rule 23 in order to proceed on her representative PAGA claim for  
15 violations of section 226(a).<sup>12</sup>

16 Finally, Willner is not required to establish injury in order to obtain judgment on this  
17 claim. All she needs to establish is a violation of section 226(a), which she has done, as discussed  
18 above. See McKenzie v. Fed. Exp. Corp., 765 F. Supp. 2d 1222, 1232 (C.D. Cal. 2011) (holding  
19 that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section  
20 226(a), and need not establish a Section 226(e) injury").

21 Accordingly, Willner's motion for summary judgment on this claim is GRANTED, and  
22 Manpower's motion is DENIED.

23 //

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25 <sup>10</sup> Notably, Manpower has never moved to dismiss Willner's PAGA claims for failure to exhaust  
26 administrative remedies.

27 <sup>11</sup> An individual suing in a representative capacity under PAGA is not required to satisfy class  
28 action requirements if the case is brought in state court. See Arias v. Superior Court, 46 Cal.4th  
969, 975 (Cal. 2009).

<sup>12</sup> Before this case was reassigned, this Court held that certification under Rule 23 was not  
required in order to assert a representative PAGA claim. Order Regarding Manpower's Motion to  
Dismiss, ECF No. 43 (May 3, 2012).

As discussed above, a genuine issue of material fact exists with respect to whether  
Manpower violated section 201.3(b)(1). Accordingly, Manpower's motion for summary judgment  
must be DENIED with respect to this claim.

## 9 | IV. CONCLUSION

10 Willner's motion for leave to file a Fifth Amended Complaint is GRANTED. Willner  
11 shall file the proposed complaint she attached to her motion within five days of the date this order  
12 is filed.

13 Manpower's motion for judgment on the pleadings or for summary judgment is  
14 GRANTED IN PART and DENIED IN PART as follows:



23 //

24 //

25 //

26 | //

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28 //

1 Willner's motion for summary judgment on her PAGA claim for inaccurate wage  
2 statements in violation of section 226(a) is GRANTED.

3 **IT IS SO ORDERED.**

4 Dated: March 31, 2014

5   
6 JON S. TIGAR  
7 United States District Judge

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